Office - Supreme Court, U.S.
FILED
DEC 14 1984
ALEXANDER L. STEVAS.
CLERK

No. 84-711

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

EDWARD RONWIN,
Petitioner,
vs.
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA,
Respondent,
SHERMAN D. FOGEL, et al.,
Real Parties in Interest.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

Philip E. von Ammon
FENNEMORE, CRAIG, von AMMON,
UDALL & POWERS
A Professional Corporation
Suite 1700
100 West Washington Street
Phoenix, Arizona 85003
(602) 257-8700
Counsel for Respondents
Fogel, Brammer, Malm, Cannon,
Platt, Hoover, Powers,
Holohan, Gordon, Hays,
Cameron, Feldman, and The
State Bar of Arizona

BEST AVAILABLE COPY

No. 84-711

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

EDWARD RONWIN,
Petitioner,
vs.
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA,
Respondent,
SHERMAN D. FOGEL, et al.,
Real Parties in Interest.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

Philip E. von Ammon
FENNEMORE, CRAIG, von AMMON,
UDALL & POWERS
A Professional Corporation
Suite 1700
100 West Washington Street
Phoenix, Arizona 85003
(602) 257-8700
Counsel for Respondents
Fogel, Brammer, Malm, Cannon,
Platt, Hoover, Powers,
Holohan, Gordon, Hays,
Cameron, Feldman, and The
State Bar of Arizona

QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals abuse its discretion in refusing to issue a writ of mandamus that would have required the district court to vacate an interlocutory order prohibiting all counsel from including accusations of falsehoods, deliberate deceptions or similar matters in future pleadings or memoranda filed with the district court?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE. 1

REASONS THE WRIT SHOULD BE DENIED 3

A. The petition presents no question of sufficient general or public importance to justify this Court's review of an interlocutory order. 3

B. The Court of Appeals correctly determined that issuance of a writ of mandamus was inappropriate. . 7

CONCLUSION 8

CERTIFICATE OF SERVICE 10

TABLE OF AUTHORITIES

CASES

American Construction Co. v. Jacksonville, Tampa & Key West Ry. Co., 148 U.S. 372, 13 S.Ct. 758 (1893). . 4
Bankers Life & Casualty Co. v. Holland, 346 U.S. 379, 74 S.Ct. 145 (1953). . 8
Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977). . . . 5
Hamilton-Brown Shoe Co. v. Wolf Brothers Co., 240 U.S. 251, 36 S.Ct. 269 (1916). 6
Roche v. Evaporated Milk Ass'n, 319 U.S. 21, 63 S.Ct. 938 (1943). . 7
Skolnick v. Hallett, 350 F.2d 861 (7th Cir. 1965). . . . 8
Theriault v. United States, 481 F.2d 1193 (5th Cir. 1973). . . . 8
Will v. United States, 389 U.S. 90, 88 S.Ct. 269 (1967) . . 7

STATUTES

18 U.S.C. § 401 8
28 U.S.C. § 1331. 2
28 U.S.C. § 1343. 2

42 U.S.C. § 1983. 2
42 U.S.C. § 1985(3) 2
42 U.S.C. § 1986. 2

RULES

Sup. Ct. R. 17. 5
Fed. R. Civ. P. 12. 8

No. 84-711

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

EDWARD RONWIN,
Petitioner,
vs.
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA,
Respondent,
SHERMAN D. FOGEL, et al.,
Real Parties in Interest.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This case arises out of an action brought by petitioner on June 14, 1982, alleging that respondents' use of the Multistate Bar Examination in February, 1984, violated petitioner's right to due process and equal protection of the laws. Petitioner alleged respondents' actions

violated 42 U.S.C. §§ 1983, 1985(3) and 1986 and that the federal courts have jurisdiction by virtue of 28 U.S.C. § 1343 and 28 U.S.C. § 1331.

On June 13, 1984, respondent National Conference of Bar Examiners (hereinafter "NCBE") moved for an order compelling petitioner to produce requested documents and to answer certain interrogatories. The district court heard oral argument on that motion on August 3, 1984.

During the hearing on August 3, 1984, the district court judge admonished petitioner for ad hominem attacks made upon counsel for NCBE[1] and ordered that future pleadings or memoranda should not

---

[1] In his response to the NCBE's motion, petitioner variously characterized arguments made by NCBE's counsel as "absolutely deceptive and . . . known to be deceptive," "deliberately misleading," and "sheer dishonesty." Petitioner's Response to NCBE's Motion to Compel Discovery and for Sanctions, dated June 22, 1984.

include "accusations of falsehood, deliberate deception or similar matters . . . ." Appendix, Petition for Writ of Certiorari, at 2.

On approximately August 15, 1984, petitioner filed a Petition for a Writ of Mandamus with the United States Court of Appeals for the Ninth Circuit asking that court to vacate the district court's order. The court denied the petition on October 13, 1984.

REASONS THE WRIT SHOULD BE DENIED

A. The petition presents no question of sufficient general or public importance to justify review of an interlocutory order.

Petitioner requests that this Court grant certiorari to review the Court of Appeals' nonfinal decree related to an interlocutory order of limited importance only to the parties to this action.

Petitioner has made no showing, however, that this Court's intervention at this stage of the proceedings is necessary "to prevent extraordinary inconvenience and embarrassment in the conduct of the cause." American Construction Co. v. Jacksonville, Tampa and Key West Ry Co., 148 U.S. 372, 13 S.Ct. 758, 763 (1893).

The only effect of the district court's challenged order was to prohibit the parties to the pending action from accusing another party of deliberately deceiving the court. While petitioner argues that his First Amendment rights have been trampled, it is unlikely that petitioner's ability to present factual and legal arguments will be affected by the order prohibiting ad hominem attacks. The limitation should not cause any party "extraordinary inconvenience" in conducting the cause.

No other basis justifies review by this Court. The issue of whether the Court of Appeals erred in refusing to issue the requested writ of mandamus presents no question of general and public importance. Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977), on which the Court of Appeals relied, is not inconsistent with any decision of this Court or of another Court of Appeals. In refusing to control the interlocutory decision of the district court, the appellate court certainly did not depart "from the accepted and usual course of judicial proceedings" or sanction "such a departure by a lower court." Sup. Ct. R. 17.1(a).

Moreover, the question presented necessarily is limited to the specific facts of this case. When the district court entered the order that petitioner

seeks to have vacated, this action had been pending for two years. Many documents had been filed and several arguments heard. The district court's order reflects its judgment that some direction was needed to maintain appropriate dignity and decorum in this particular action. Little possibility exists that the propriety of such an order will arise in other actions since this order is inextricably linked to the specific arguments advanced below and this petitioner's method of presenting his argument.

Since this action presents no extraordinary circumstances and raises no issue of general importance, this Court should decline to review the nonfinal decree of the Court of Appeals. See Hamilton-Brown Shoe Co. v. Wolf Brothers & Co., 240 U.S. 251, 36 S.Ct. 269 (1916).

B. The Court of Appeals correctly determined that issuance of a writ of mandamus was inappropriate.

Under the circumstances of this case, issuing a writ of mandamus would have been inappropriate. Hence, in refusing to issue a writ, the Court of Appeals did not depart from the accepted course of judicial proceedings.

The "traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." Roche v. Evaporated Milk Ass'n, 319 U.S. 21, 26, 63 S.Ct. 938, 941 (1943). Only a showing of exceptional circumstances would have justified invocation of this extraordinary remedy. See Will v. United States, 389 U.S. 90, 95,

88 S.Ct. 269, 273 (1967). Petitioner made no such showing.

The writ was not needed to confine the lower court to its prescribed jurisdiction, since the district court had jurisdiction to prohibit the introduction of scandalous material into the record and to maintain discipline and decorum. See Theriault v. United States, 481 F.2d 1193 (5th Cir. 1973); Skolnick v. Hallett, 350 F.2d 861 (7th Cir. 1965); 18 U.S.C. § 401; Fed. R. Civ. P. 12.

Petitioner sought extraordinary review by mandamus simply to obtain a determination as to whether the district court erred in this discretionary matter. That question, however, can be determined upon appeal after final judgment. Use of a writ of mandamus to control the district court's decision thus would have been inappropriate. See Bankers Life &

Casualty Co. v. Holland, 346 U.S. 379, 382-83, 74 S.Ct. 145, 148 (1953).

Clearly, the Court of Appeals neither departed from the accepted course of judicial proceedings nor sanctioned such a departure by the district court. Furthermore, the question of whetner the lower court erred can be determined on direct appeal. The Court of Appeals had no occasion to issue the writ.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

RESPECTFULLY SUBMITTED this 4th day of December, 1984.

By Philip E. von Ammon

Philip E. von Ammon
FENNEMORE, CRAIG, von AMMON, UDALL & POWERS
Suite 1700
100 West Washington Street
Phoenix, Arizona 85003
Counsel for Respondents
Fogel, Brammer, Malm, Cannon, Platt, Hoover, Powers, Holohan, Gordon, Hays, Cameron, Feldman, and The State Bar of Arizona

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit were served by depositing the Briefs in a United States Post Office, first-class postage prepaid, on December 4, 1984, on all parties required to be served, as follows:

Edward Ronwin
P.O. Box 3583
Urbandale, Iowa 50322

Philip C. Thorpe, Esq.
Black, Robertshaw & Copple, P.C.
Suite 300, The Brookstone
2025 North Third Street
Phoenix, Arizona 85012

By Philip E. von Ammon
Philip E. von Ammon
Suite 1700
100 West Washington Street
Phoenix, Arizona 85003
Counsel for Respondents
Fogel, Brammer, Malm,
Cannon, Platt, Hoover,
Powers, Holohan, Gordon,
Hays, Cameron, Feldman, and
The State Bar of Arizona